

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

AUGUST LARTIGUE

CIVIL ACTION 9-0262

VERSUS

U.S. DISTRICT JUDGE TRIMBLE

MICHAEL J. ASTRUE,
Commissioner

U.S. MAGISTRATE JUDGE KIRK

REPORT AND RECOMMENDATION ON ATTORNEY FEES

In this case, plaintiff asks the court for an award of attorney's fees under the Equal Access to Justice Act, 28 U.S.C. 2412(d), hereinafter "EAJA" [Doc. # 21]. The government's position in this case was not substantially justified but the government has objected to the award of attorney fees by filing an opposition brief asserting that the motion for attorney fees was filed too late.

"A party seeking an award of fees and other expenses shall, within thirty days of final judgment in the action, submit to the court an application for fees and other expenses" 28 U.S.C. §2412(d)(1)(B). A final judgment for such purposes is one that is not appealable. 28 U.S.C. §2412(d)(2)(G) and which terminates the action for which EAJA attorney fees may be received. Melkonyan v. Sullivan, 111 S. Ct. 2157 (1991). A judgment must be appealed within 60 days after judgment where the United States is a party. FRCP 4(a)(1)(B).

The district judge's judgment was entered on our docket on July 7, 2011. The delays for appeal in this case expired on September 5, 2011. The motion for attorney fees was, therefore, required to have been filed no later than October 5, 2011. The instant motion was electronically filed on October 6, 2011 at 8:31 a.m. according to the court's records. Therefore, this motion is

untimely.

Conclusion

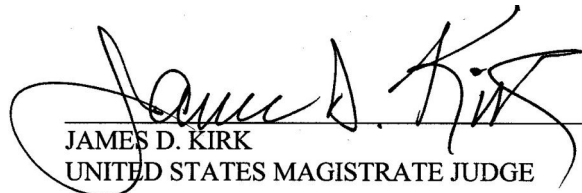
For the foregoing reasons, IT IS RECOMMENDED that the motion for attorney's fees be DENIED.

OBJECTIONS

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and Fed.R.Civ.P. 72(b), the parties have fourteen (14) calendar days from service of this Report and Recommendation to file specific, written objections with the clerk of court. No other briefs or responses (such as supplemental objections, reply briefs etc.) may be filed. Providing a courtesy copy of the objection to the magistrate judge is neither required nor encouraged. Timely objections will be considered by the district judge before he makes his final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) CALENDAR DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT UPON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UN-OBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

Alexandria, Louisiana, on this 17th day of November, 2011.


JAMES D. KIRK
UNITED STATES MAGISTRATE JUDGE